Proskauer

Low Wage and Employee Classification Limits on Non-Compete Agreements

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Over the past few years, states across the country have sought to limit or reduce the use of employee non-compete agreements. While some have imposed outright bans on such agreements, many more have passed laws that narrow the scope or classification of an employee who may be subject to a non-compete.

A common restriction is to prohibit the use of non-competes for employees who earn below a certain threshold – *e.g.*, annual compensation, hourly wage, percentage of poverty level, or FLSA status. Employers operating in multiple states face a patchwork of regulations and need to keep their non-compete thresholds up to date. Setting calendar reminders for the annual wage updates and following the Proskauer Non-Compete and Trade Secrets page are the right steps to keep agreements compliant as the patchwork evolves.

Colorado

Non-competes prohibited for employees earning less than $112,500 per year. Customer non-solicits prohibited for employees earning less than $67,500 per year.

Illinois

Non-competes prohibited for less than $75,000 per year. Non-solicits prohibited for employees earning less than $45,000 per year.

Maine

Non-competes prohibited for employees earning wages at or below 400% of the federal poverty level, or $58,320 per year.

Maryland

Non-competes prohibited for employees earning less than or equal to $15 per hour or $31,200 per year.

Massachusetts

Non-competes prohibited for: (i) non- exempt employees; (ii) undergraduate or graduate students participating in internships or short-term employment; employees that have been terminated without cause or laid off; and employees under the age of 18.

New Hampshire

Non-competes prohibited for employees earning an hourly wage less than or equal to 200% of the federal minimum wage ($14.50 per hour or $30,160 per year); or (ii) less than or equal to 200% of the tipped minimum wage in the state.

Nevada

Non-competes prohibited for employees who are paid solely on an hourly wage basis, exclusive of tips or gratuities.

Oregon

Non-competes prohibited for employees earning less than or equal to $100,533* per year.

Rhode Island

Non-competes prohibited for: (i) non- exempt employees; (ii) undergraduate or graduate students participating in internships or short-term employment; employees under the age of 19; and employees whose average annual earnings (excluding overtime, Sunday, or holiday premiums) are less than 250% of the federal poverty level, or $36,450 per year.

Virginia

Non-competes prohibited for employees earning less than Virginia’s average weekly wage: $1,343 per week or $69,836 per year.

Washington

Non-competes prohibited for employees earning less than $116,593.18 per year, and independent contractors earning less than $291,482.95 per year.

Washington, DC

Non-competes prohibited for employees earning less than $150,000 per year.

**This number is current as of January 1, 2022.*

Related Professionals

- **Guy Brenner**
  Partner
- **Steven D. Hurd**
  Partner
- **Steven J. Pearlman**
  Partner